

REMARKS

Status of the Claims

Claims 1-20 are pending in the present application. Claims 1-4, 6-8 and 11-1 were rejected under 35 U.S.C. § 103(a) as “being unpatentable over U.S. patent No. 6,992,212 to Zehner et al. (Zehner) in view of EP 0196520 (EP 520).” (Office Action at 2). Claims 1-4, 6-8 and 11-19 were rejected “on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of Zehner (above) in view of EP 520.” (Office Action at 4). Claims 5, 9, and 10 were objected to for dependency on one or more rejected claims and “therefore, would be allowable if rewritten in independent form, including all limitations of intervening claims.” (Office Action at 4).

Rejection Under 35 U.S.C. § 103(a) Over Zehner in view of EP 520

According to the Examiner, “Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 C.F.R. 1.55.” (Office Action at 3). In response, Applicants submit herewith the enclosed Claim for Priority and Submission of Documents. Included in this submission is a certified copy of Applicants’ German priority document, DE 102 49 928.4, filed October 26, 2002, as well as a translation of that document including a verified statement that the translation is true and correct. Applicants submit that this submission meets the requirements of 37 C.F.R. 1.55 and that this rejection is therefore overcome.

Obviousness-type Double Patenting Rejection

As noted above, claims 1-4, 6-8 and 11-19 were rejected “on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of Zehner (above) in view of EP 520.” (Office Action at 4). The rejections of these claims under the judicially created doctrine of obviousness-type double patenting have been overcome by the attached Terminal Disclaimer, which has been signed by an attorney of record. The filing of the Terminal Disclaimer is not to be construed as an admission, estoppel or acquiescence. See *Quad*

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Environmental Technology v. Union Sanitary District, 20 USPQ2d 1392 (Fed. Cir. 1991) and *Ortho Pharmaceuticals Corp. v. Smith*, 22 USPQ2d 1119 (Fed. Cir. 1992).

Applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 22-0185, under Order No. 12810-00074-US from which the undersigned is authorized to draw.

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Respectfully submitted,

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